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IN THE

Supreme Court of the United States

October Term, 1963

No. 978

HENRIETTA BRODY, doing business as ALBERT FRENCH RESTAURANT,

Petitioner,

vs.

MARTIN C. EPSTEIN, Chairman of the New York State Liquor Authority, and the NEW YORK STATE LIQUOR AUTHORITY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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Petitioner, Henrietta Brody, doing business as Albert French Restaurant, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York affirming the decision of the Appellate Division which confirmed respondents' order suspending petitioner's liquor license.

Opinions Below

All decisions below were without opinion.

Jurisdiction

The Court of Appeals of the State of New York entered its judgment on November 21, 1963, affirming the decision of the Appellate Division of the Supreme Court of the

State of New York which confirmed the order of the respondents based upon an alleged violation of Section 65 of the Alcoholic Beverage Control Law of the State of New York. By order dated January 9, 1964, the Court of Appeals denied petitioner's motion for a rehearing and granted petitioner's motion to amend the remittitur.

Upon the appeal herein there was presented and necessarily passed upon an alleged question under the Constitution of the United States, *viz.*: petitioner contended that a delay of four months on the part of the State Liquor Authority in notifying her of an alleged violation of § 65, subd. 1, of the Alcohol Beverage Control Law was a denial of due process under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that there was no such denial. All concurred except Van Voorhis, J., who dissented and voted to deny the motion upon the ground that the constitutional question was not presented by the petition.

The jurisdiction of this Court is invoked under Title 28, Section 1257(3) of the United States Code.

Question Presented

The question squarely presented is whether the unexplained failure of an administrative agency to notify an accused of an alleged violation of law for some four months after learning of the alleged violation constitutes a failure to give reasonable notice and effectively destroys the right to defend guaranteed by the due process clause of the 14th Amendment to the Constitution.

Constitutional Provision Involved

Pertinent portions of the United States Constitution, Amendment 14, are reprinted in the Appendix (p. 9 *infra*).

Statement of the Case

On January 29, 1962, for the first time respondents charged petitioner with a violation of Section 65 of the Alcoholic Beverage Control Law, which alleged violation occurred on the evening of September 16, 1961 (46-50).*

Thus, petitioner was first apprised of the complaint resulting in a suspension of her license some four and one-half months after the alleged service of alcoholic beverages to the minors in question (46-50). This, despite the fact that the mother of one of the girls, Mrs. Margaret McCool, had registered a complaint with the State Liquor Authority within two days of the evening on which the girls were allegedly served (175-177).

Immediately upon being apprised of the complaint lodged against her, petitioner requested the State Liquor Authority to supply a description of the minors and the location in the restaurant where they were allegedly seated. This was not forthcoming until the hearings commenced.

This delay in notifying petitioner in the first instance and in failing to provide the information requested, for which no excuse is even proffered, effectively deprived petitioner of any opportunity to adequately investigate the facts or to obtain witnesses to explain or defend against a charge made against her. Under the circumstances, where the petitioner employs an average of fourteen (14) waiters (165) and serves a large clientele it cannot be said that she was afforded anything resembling a full and fair opportunity to present proof or to offer evidence in explanation or rebuttal of the charge in issue.

The denial of due process was raised in the Appellate Division based upon the facts elicited at the hearing before the New York State Liquor Authority. Petitioner prior to

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*Figures in parentheses refer to folios of Certified Record on Appeal in the Court of Appeals.

his appeal to the Court of Appeals of the State of New York obtained an order dated April 4, 1963, certifying that a constitutional question was involved on the appeal (2B). Subsequently, the Court of Appeals by order dated January 9, 1964, stated in relevant part as follows:

> "Upon the appeal herein there was presented and necessarily passed upon an alleged question under the Constitution of the United States, viz.: petitioner contended that a delay of four months on the part of the State Liquor Authority in notifying her of an alleged violation of § 65, subd. 1, of the Alcoholic Beverage Control Law was a denial of due process under the Fourteenth Amendment to the Constitution of the United States."

Reasons for Granting the Writ

This Court has already noted the great extent to which regulatory commissions and administrative agencies have been invested with the power to administer law in this land. *Ohio Bell Tel. Co.* v. *Public Utilities Commission of Ohio*, 301 U. S. 292, 304 (1937). The question squarely presented is whether the unexplained failure of an administrative agency to notify an accused of an alleged violation of law for some four months after learning of the alleged violation, constitutes a failure to give reasonable notice and effectively destroys the right to defend guaranteed by the due process clause of the Fourteenth Amendment to the Constitution.

The notorious sluggishness of administrative agencies, state and federal, should not be tolerated where they are invested with the judicial function of administering laws.

As the statement of facts (*supra*, pp. 3, 4) shows, the nature of the violation with which petitioner was charged inherently makes the preparation of a defense extremely difficult. Here, the unexplained, and more, inexplicable, four month delay in notifying petitioner of the charge against her was the equivalent of a failure to

give notice—it made impossible the preparation of a defense.

In holding that petitioner was not denied due process in this case, the Court of Appeals of the State of New York decided an important federal question in a manner not in accord with the decisions of this Court. It would be salutary for this Court to reaffirm the rule that parties in state proceedings are entitled to the safeguards guaranteed by the due process clause of the Fourteenth Amendment. *Morgan* v. *United States*, 304 U. S. 1, 22 (1938); *Louisville and Nashville Rd. Co.* v. *Schmidt*, 177 U. S. 230 (1900).

This Court, in setting aside an administrative proceeding on the ground that it failed to provide a full and fair hearing, stated:

> "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one." *Morgan* v. *United States*, 304 U. S. 1, 18 (1938).

Where, as here, the petitioner operates a restaurant catering to a large transient clientele, the unexplained delay of some four months in giving notice effectively destroyed her ability to defend.

The seriousness of this issue was stated by Mr. Justice Cardozo in *Ohio Bell Tel. Co.* v. *Public Utilities Comm'n of Ohio*, 301 U. S. 292, 304-5 (1937):

> "Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. . . . Indeed, much that they do within the realm of administrative discretion is exempt